# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Questions presented | 2 |
| Statutes involved | 2 |
| Statement | 2 |
| Summary of argument | 8 |
| Argument: | |
| I. The government does not rely upon the holding of the Court of Appeals that the Attorney General is a necessary party | 14 |
| II. Since petitioner was in fact relieved from service as a neutral alien, he is ineligible for citizenship and thereby is also ineligible for suspension of deportation under the Immigration Act of 1917 (as amended) | 16 |
| A. The Selective Training and Service Act of 1940 and the regulations relieved petitioner from service, irrespective of further administrative action | 17 |
| B. The selective service board, by its conduct in refraining from inducting petitioner, recognized petitioner's relief from liability for military service | 20 |
| C. The fact that petitioner's status subsequently changed does not negate the fact that he did obtain exemption | 21 |
| III. Debarment from citizenship under Section 3 (a) of the Selective Training and Service Act of 1940, results from the making of an application for relief from military service by the alien | 23 |
| A. The language, purpose, legislative history, judicial, and administrative construction of Section 3 (a) show that the application for exemption is the debarring act | 24 |
| 1. The language | 24 |

Argument—Continued
III. Debarment from citizenship, etc.—Continued Page
A. The language, purpose, etc.—Continued
2. The purpose 25
3. The contemporary legislative history 25
4. Judicial opinions 29
5. The contemporary administrative construction 30
B. The historical development of this type of legislation shows that the bar to citizenship stems from the claim to exemption 32
1. The period prior to 1940 32
2. The period subsequent to 1941 and prior to the 1952 immigration legislation 38
3. The Immigration and Nationality Act of 1952 40
IV. Petitioner's request for suspension of deportation, made before the 1952 Act, is not to be determined under the 1952 law 46
Conclusion 47
Appendix A, Statutes involved 48
Appendix B, The circumstances of petitioner's signing of the exemption forms 51

## CITATIONS

Cases:
*Ballester-Pons* v. *United States*, 220 F. 2d 399, certiorari denied, 350 U. S. 830 23
*Berini, Petition of*, 112 F. Supp. 837 45
*Caputo, Petition of*, 118 F. Supp. 870 29, 45
*Cuozzo, Petition of*, 235 F. 2d 184 23
*Dweck, Petition of*, 106 F. Supp. 169 23
*Fatoullah, Petition of*, 76 F. Supp. 499 23
*G, Matter of*, 5 I. E. N. Dec. 106 47
*Gustavson, In re*, 300 Fed. 251 36
*Machado* v. *McGrath*, 193 F. 2d 706, certiorari denied, 342 U. S. 948 23, 30
*Mannerfrid* v. *United States*, 200 F. 2d 730, certiorari denied, 345 U. S. 918 30
*Martinez, In re*, 73 F. Supp. 101 23
*McGrath* v. *Kristensen*, 340 U. S. 162 12, 29, 44

Cases—Continued


| | Page |
|---|---|
| *Molo, In re*, 107 F. Supp. 137 | 23 |
| *Moser, Petition of*, 85 F. Supp. 683 | 43 |
| *Moser* v. *United States*, 341 U. S. 41 | 30, 43, 45 |
| *Navarro* v. *Landon*, 108 F. Supp. 922 | 30 |
| *Rasmussen* v. *Brownell*, No. 399, This Term | 29 |
| *Samowich, In re*, 70 F. Supp. 273 | 45 |
| *Schulz, Petition of*, 384 Pa. 558, 121 A. 2d 164 | 45 |
| *Shaughnessy* v. *Pedreiro*, 349 U. S. 48 | 3, 8, 14, 16 |
| *Siem, In re*, 284 Fed. 868, affirmed, 299 Fed. 582 | 37 |
| *United States* v. *Bazan*, 228 F. 2d 455 | 19, 29 |
| *Urmeneta, In re*, 42 F. Supp. 138 | 45 |
| *Velasquez, Petition of*, 139 F. Supp. 790 | 23 |
| *Zumsteg, Petition of*, 122 F. Supp. 670 | 45 |
| Statutes and regulations: | |
| Act of July 17, 1862, c. 201, 12 Stat. 597 | 33 |
| Act of March 3, 1863, 12 Stat. 731 | 33 |
| Act of April 22, 1898, 30 Stat. 361 | 33 |
| Act of May 18, 1917, 40 Stat. 76 | 33 |
| Act of July 9, 1918, 40 Stat. 885, 955 | 36 |
| Act of Feb. 11, 1931, 46 Stat. 1087 | 37 |
| Act of June 24, 1948, 62 Stat. 604 | 38, 39, 42, 43 |
| Act of June 19, 1951 (65 Stat. 75) | 44 |
| Immigration Act of 1917, as amended, 62 Stat. 1206, 8 U. S. C. (1946 ed.) (Supp. V) 155, Section 19 (c) | 46, 48 |
| Immigration Act of 1924, as amended by the Act of October 29, 1945, 59 Stat. 551, 8 U. S. C. (1946 ed.) 224 (c), Section 28 (c) | 49 |
| Immigration and Nationality Act of 1952, 66 Stat. 169, 242, 280, 8 U. S. C. 1101 (a) (19), 1426, 1101 fn.: | |
| Sec. 101 (a) (19) | 13, 44, 49 |
| Sec. 244 | 46 |
| Sec. 315 (a) (b) | 13, 19, 29, 42, 44, 45, 49 |
| Sec. 405 (a) (b) | 6, 50 |
| Nationality Act of 1940, Sec. 504, 54 Stat. 1137, 1172 | 45 |
| Selective Training and Service Act of 1940, 54 Stat. 885, as amended, 50 U. S. C. App. (1946 ed.) 303 (a), Sec. 3 (a) | 8, 9, 10, 11, 13, 17, 24, 26, 42, 44, 48 |
| Universal Military Training and Service Act, Section 4 (a) 65 Stat 75 | 39, 40 |
| 7 F. R. 2087, effective Mar. 16, 1942 | 18, 30–31 |
| 7 F. R. 3424 | 4 |

Statutes and regulations—Continued Page
Selective Service Regulations:
Sec. 622.43, effective March 16, 1942, 7 F. R. 2087 ..... 18, 30–31
Sec. 622.43, as revised, effective October 1, 1943 (32 C. F. R. (1938 ed., 1943 Supp.)) 622.43; 8 F. R. 13672 ..... 31
Sec. 623.1 ..... 31
Sec. 623.61 ..... 31
Miscellaneous:
62 Cong. Globe 991 ..... 33
62 Cong. Globe 993 ..... 33
62 Cong. Globe 991–993, 997–1002, 1217 ..... 33
62 Cong Globe 1001 ..... 33
56 Cong. Rec. 4854 ..... 34
56 Cong. Rec. 4855 ..... 34
56 Cong. Rec. 4857–4858 ..... 34
56 Cong. Rec. 8249 ..... 35
56 Cong. Rec. 8415–8419 ..... 35
56 Cong. Rec. 8485 ..... 36
87 Cong. Rec. 5726 ..... 26, 27
87 Cong. Rec. 9905 ..... 29
97 Cong. Rec. 3909 ..... 40
97 Cong. Rec. 6249 ..... 40
97 Cong. Rec. 6253 ..... 40
H. R. 2379, 82d Cong., 1st Sess ..... 43
Hearings of House Committee on Military Affairs on S. J. Res. No. 84, 65th Cong., 1st Sess., pp. 4, 10 ..... 34
Hearings, House Committee on Military Affairs on H. R. 6215, 77th Cong., 1st Sess., Dec. 13, 1941, pp. 1–2 ..... 27
Hearings, Sen. Committee on Military Affairs on S. 4164, 76th Cong., 3d Sess., July 3, 5, 10–12, 1940, p. 357 ..... 26
Hearings, Sen. Committee on Military Affairs, 77th Cong., 1st Sess., on S. 2126, Dec. 15 and 16, 1941, pp. 1, 46, 51, 58 ..... 28
H. Rep. No. 342, 65th Cong., 2d Sess., pp. 2–3 ..... 34
H. Rep. No. 763, 65th Cong., 2d Sess., p. 5 ..... 36
H. Rep. No. 910, 71st Cong., 2d Sess ..... 45
H. Rep. No. 1508, 77th Cong., 1st Sess., pp. 4, 6 ..... 18, 28
H. Rep. No. 346, 79th Cong., 1st Sess ..... 38

Miscellaneous—Continued


| | Page |
|---|---|
| H. Rep. No. 2438, 80th Cong., 2d Sess., pp. 44–45 | 39 |
| H. Rep. No. 535, 82d Cong., 1st Sess | 40 |
| 3 Hackworth, *Digest of International Law* | 33, 34 |
| Immigration and Naturalization Service, Interpretation No. 1, June 5, 1941 | 45 |
| Local Board Memorandum No. 112, Amendment of | 5, 20 |
| 4 Moore, *Digest of International Law* | 33 |
| S. Rep. No. 923, 71st Cong., 2d Sess | 45 |
| S. 1397, 77th Cong., 1st Sess | 26 |
| S. Rep. No. 915, 77th Cong., 1st Sess., p. 2 | 9, 18, 28–29 |
| S. 3455, 81st Cong., 1st Sess | 41 |
| S. 716, 82d Cong., 1st Sess | 43 |
| S. Rep. No. 1268, 80th Cong., 2d Sess., p. 6 | 39 |
| S. Rep. No. 1515, 81st Cong., 2d Sess., pp. 725, 731 | 41, 42 |

# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 71

LUIS ALVARA CEBALLOS (Y ARBOLEDA), PETITIONER

*v.*

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE AT THE PORT OF NEW YORK

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE RESPONDENT

### OPINIONS BELOW

The opinion of the Court of Appeals (R. 92–93) is reported at 229 F. 2d 592. The opinion of the District Court (R. 18–22) is reported at 130 F. Supp. 30.

### JURISDICTION

The judgment of the Court of Appeals was entered on February 6, 1956 (R. 94). The petition for a writ of certiorari was filed on April 28, 1956, and was granted on June 11, 1956 (R. 94). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

## QUESTIONS PRESENTED

An alien applied for exemption from military service as a neutral alien in 1943, under a statutory provision and by means of a selective service form both of which specified that such "application" would forever debar him from citizenship in the United States. The alien was not thereafter formally classified by his selective service board, but he was not called by the board until his country ceased to be neutral. The question presented is whether he is debarred from citizenship under Section 3 (a) of the Selective Training and Service Act of 1940.[1]

## STATUTES INVOLVED

The pertinent provisions of the Selective Training and Service Act of 1940 and the Immigration Acts of 1917 and 1924, together with analogous and further provisions of the Immigration and Nationality Act of 1952, are set forth in Appendix A, *infra*, pp. 48–50.

## STATEMENT

Petitioner seeks reversal of the judgment of the Court of Appeals for the Second Circuit (R. 94) affirming the judgment of the District Court for the Southern District of New York (R. 22–23) dismissing his action for a declaratory judgment to declare that he was not barred from United States citizenship and was thus eligible for suspension of deportation, and denying a temporary injunction to restrain the Dis-

[1] The Government, as stated in the Brief in Opposition (pp. 10–11), does not rely upon that aspect of the decision of the Court of Appeals which holds that petitioner omitted a necessary party in failing to make the Attorney General a party to the action. See Point I, *infra*, p. 14.

trict Director of the Immigration Service from taking him into custody for deportation (R. 4–5).

The District Court's dismissal of the complaint was upon the ground that the Attorney General was a necessary party (R. 18–22).[2] The Court of Appeals affirmed upon two grounds. First, the court adhered to the view that the Attorney General was a necessary party where suspension of deportation, rather than a finding of deportability, was involved (R. 92–93). Secondly, and independently, the court held that as a matter of law petitioner was not entitled to the relief he sought since he had made application for relief from military service and was thus debarred from becoming a citizen (R. 93).

With respect to the issue of petitioner's application for relief from military service and consequent debarment from citizenship, the following facts, appearing in the administrative record, are undisputed. Petitioner, a citizen of Colombia, was admitted to the United States for permanent residence in February 1942 (R. 34, 56). He was employed as export clerk for Smith Kirkpatrick, New York City, and as a translator for Union Carbide & Carbon Corporation (R. 34–35).

He registered under the Selective Training and Service Act in May 1942 (R. 56). On June 16, 1943, being then 30 years of age (R. 7, 12), he executed Form DSS 304, "Alien's Personal History and Statement", filling in the word "do" in the statement, "I

[2] The opinion of the District Court was handed down on April 15, 1955, while *Shaughnessy* v. *Pedreiro*, 349 U. S. 48, was pending in this Court.

404786—56——2

*do* object to service in the land and naval forces of the United States" (R. 35). The form contained the following notice:

> * * * If you are a citizen or subject of a neutral country and you do not wish to serve in the land or naval forces of the United States, you may apply to your Local Board for an application by alien for relief from military service (Form 301) which, when executed by you and filed with the Local Board, will relieve you from the obligation to serve in the land and naval forces in the United States, but will also debar you from thereafter becoming a citizen of the United States [7 F. R. 3424].

On August 26, 1943, petitioner executed Form DSS 301 (R. 35). This form bears the heading in large letters "Application by Alien for Relief from Military Service" (R. 65), and contains the following paragraph (R. 80).

> I do hereby make application to be relieved from liability for training and service in the land or naval forces of the United States, under the Selective Training and Service Act of 1940, as amended, in accordance with the act of Congress, approved December 20, 1941. I understand that the making of this application to be relieved from such liability will debar me from becoming a citizen of the United States. I have not filed a declaration of intention to become a citizen of the United States.*

* Petitioner makes no claim, either in his petition or his brief, that he misunderstood the forms, but in his statement of facts in the petition (Pet. 7–8) he makes two statements, which are eliminated in his brief (Pet. Br. 5–6), implying that he discussed the forms with the selective service board and supposed that the

Subsequent to petitioner's execution of Form 304, on June 16, 1943, stating "I do object to service in the land and naval forces", the selective service board apparently took no action to induct petitioner or to exempt him formally from induction until January 1944, after Colombia ceased to be a neutral nation and petitioner's status as a neutral alien had accordingly ended. Colombia declared war on November 26, 1943 (R. 49, 80), and notice thereof was issued to local boards by the Selective Service System on December 20, 1943 (Amendment of Local Board Memorandum No. 112). Petitioner thereupon was classified I–A (R. 32, 61). However, upon physical examination, petitioner was not accepted, and he was never inducted into the armed forces (R. 33, 61).

Some six years later, apparently in 1950, petitioner became a citizen of Mexico (R. 78–79). On January 3, 1951, he married a United States citizen (R. 37, 74). On April 2, 1951, he entered the United States by plane at New York, stating his purpose as transit to Mexico (R. 26–28). He did not continue to Mexico and he did not apply for an extension of the temporary admission (R. 28); he was thereupon arrested as being in the United States in violation of the immigration laws (R. 26–27).

---

forms were a mere means to assignment in some hypothetical Colombian contingent of the United States Army. The suggestion was fully explored at the hearings and by the Board of Immigration Appeals and found untrue. The facts and findings on this point are summarized in Appendix B, *infra*, pp. 51–53.

At the deportation hearing on July 31, 1951, petitioner asked for the discretionary relief of suspension of deportation under the Immigration Act of 1917, then in effect (R. 3, 42, 70). Petitioner's wife, who had accompanied him on the plane, testified that at the time she came to the United States she was pregnant and not feeling well (R. 39). She and petitioner decided to stay in the United States because she would thus be with her family (R. 39), would receive better medical care than in Mexico (R. 39), and because the child would then be a citizen of the United States (R. 40). Petitioner testified that his reasons for not going on to Mexico were "the way my wife feels about remaining here in the United States and * * * I would very much like to remain here; my business is here, my wife is from this country, and my relatives—my other brothers—are moving to this country" (R. 44). Petitioner asserted that he had not had an intention to remain here when he emplaned for the United States (R. 44).

The special inquiry officer, both after the initial hearing (R. 70–72) and after the reopened hearing (R. 74–77), found petitioner ineligible for suspension of deportation because ineligible for citizenship as a result of the application for relief from military service.[4] The special inquiry officer granted peti-

[4] The officer found that petitioner's deportation would meet the criterion of "serious economic detriment" to his wife and two children, all born in the United States (R. 74), which criterion, rather than "exceptional and extremely unusual hardship" (the present standard), was the standard under the 1917 enactment. The 1917 law governed petitioner's application for suspension of deportation by reason of Section 405 (a), the savings clause of

tioner the privilege of voluntary departure, but petitioner continued to live in the United States (R. 12, 77).

On appeal, the Board of Immigration Appeals concluded (R. 86–87, 89):

> [T]here is no competent evidence to establish that [petitioner] was not reclassified in accordance with Selective Service regulations applicable to his case. * * *. The fact that he was called for induction so quickly after Colombia became a belligerent and was not troubled from August 26, 1943, the date he signed the Form DSS 301, for the entire period that Colombia remained a neutral is some evidence that he received the exemption he applied for. In any event, it is our belief that the act of filing the Form DSS 301 * * * created the bar to naturalization. The clear language of the statute, requires this conclusion. * * *. The statute does not require that any act follow the filing of the application to make the neutral alien exempt and the regulations to implement the law do not so provide (32 CFR 622.43, 1943 Supp.).
>
> * * * * *
>
> [W]hether or not the alien was reclassified, it is clear that after he had filed his application, he could not have been legally inducted while Columbia remained a neutral (32 CFR 622.43 (b), *supra*).

---

the Immigration and Nationality Act of 1952 (*infra*, App. A. p. 50). Petitioner was then in no position to file a new application for suspension under the 1952 Act, as he did not meet the minimum residence requirements. See *infra*, pp. 46–47.

Upon the final reconsideration by the Board of Immigration Appeals of its adverse ruling on February 17, 1955, petitioner commenced the instant action in the District Court to require him to be declared eligible for suspension of deportation.

## SUMMARY OF ARGUMENT

### I

The government, as already stated in its brief in opposition to certiorari (p. 10), does not rely upon that aspect of the decision of the Court of Appeals which holds that the Attorney General is a necessary party. Despite the distinction that suspension of deportation, rather than deportation itself, is involved here, the general considerations enunciated by this Court in *Shaughnessy* v. *Pedreiro,* 349 U. S. 48, 52–54, appear to be controlling. This will be the position of the government in future cases.

### II

The Court of Appeals affirmed the dismissal of petitioner's complaint upon the merits as well as on the indispensable-party issue. While the court properly rested its substantive holding on the ground that the statute (Section 3 (a) of the Selective Training and Service Act, App. A, *infra,* p. 48) imposed debarment from citizenship upon the act of the alien in making application for exemption, regardless of whether the alien actually received relief from service, we suggest, first, that this issue need not be reached since petitioner did actually obtain exemption.

A. Section 3 (a) of the 1940 Selective Service Act provides that a neutral alien "shall be relieved from liability for training and service under this Act if, prior to his induction into the land or naval forces, he has made application" in accordance with the regulations. This language embodies no requirement that there be some additional administrative action for the claimed exemption to go into effect. The self-executing nature of the grant of exemption, once a proper application is made, is confirmed by the language of the Congressional reports and the regulations, as well as by the basic purpose of affording recognition to the objections of other nations to the drafting of their subjects—a recognition that would be incomplete if the grant of exemption, as distinguished from the evidencing of the grant, were left to the vagaries of administrative discretion or tardiness. In the language of S. Rep. No. 915, 77th Cong., 1st Sess., p. 2, petitioner was relieved by the statute of liability for military service "upon making application."

B. In any event, petitioner received actual exemption from his board. Before he filed his Form 301 in August 1943, he had been subjected to the usual requirements imposed upon one considered liable to service. After his filing of Form 301, however, the board at no time disturbed him further until he ceased to be a neutral alien. The freedom from call after he filed his Form 301 and the prompt call for induction in January 1944, after he ceased to be a neutral alien, cannot reasonably be attributed, in light of the war-time manpower needs

of 1943, to anything but the recognition that he was exempt.

This relief from service was in no sense nullified by the selective service board's failure to evidence it by a formal IV-C classification. If petitioner had at any time felt dubious about his status, he could have called for his classification and notice card. Conversely, if the board had overlooked the exemption and called petitioner for service, the Form 301 would have constituted a complete bar to induction.

C. The fact that petitioner's status changed when his country, Colombia, ceased to be a neutral does not negate the fact of exemption. Petitioner knowingly made a choice of exemption from service as against the future possibility of citizenship. It is that fact of choice which Congress has made the basis of ineligibility to citizenship.

## III

If, however, it be assumed that petitioner was not in fact exempted, his case must nevertheless fail, for the pertinent provision of Section 3 (a) of the 1940 Selective Service Act, imposes debarment from citizenship upon any person "who makes such *application*" (emphasis added). Petitioner indisputably was such a person.

A. All of the pertinent factors show that, at the time of its enactment, Section 3 (a) made the *application* decisive. The statute makes no exception for the person who fails to receive all or as much as he expected. His recourse is against the administrative authorities if they seek to deprive him of his exemption, but the stamp remains upon him as one

who, in a critical time, chose not to serve the United States and whose undesirability as a citizen of the United States has accordingly been determined by the Congress.

1. As drafted and here applicable, Section 3 (a) attached to the act of applying for exemption two separate consequences, neither of which was conditioned upon the other: exemption from service and debarment from citizenship. That is the precise way the statute reads. And while it was not envisaged by the legislators, in light of the mandatory nature of the statute, that either exemption or debarment would or could fail to occur, there is also legislative history indicating that debarment from citizenship was to be an inevitable and unconditional consequence of a choice by an alien to reject military service.

2. The basic rationale of the statute is a Congressional judgment of the undesirability as a citizen of one who would deliberately choose not to serve in wartime. Section 3 (a) is a recognition by the United States of the general privilege of certain aliens to exemption from military service—a consistent counterpart of the vigorous historical insistence by the United States upon freedom of its own citizens from service in foreign armies. But if the provision for debarment were a mere device for pressuring aliens into service and thus a species of punishment, not to be inflicted if the objective of obtaining military service from the alien was achieved, such pressure would run counter—clearly though indirectly—to the recognition of the alien's rights which was basic to Section 3 (a). The determination of who would be

404786—56—3

a desirable citizen is, however, a wholly domestic issue. And Congress required that determination to be made on the basis of the alien's choice—his application for exemption.

3. The intent to make the application the decisive factor is confirmed by the language of the Congressional reports at the time of the enactment of Section 3 (a), all of which talk in terms of the request for relief as the operative element.

4. Judicial holdings on the point are rare since the factual situation of applications-not-followed-by-exemption has seldom arisen. But where this Court and other courts have tangentially interpreted the language of Section 3 (a) in incidentally paraphrasing it, they too have spoken in terms of the application for relief as the effective factor. *E. g., McGrath* v. *Kristensen,* 340 U. S. 162, 172.

5. The contemporary administrative construction, by the selective service regulations, reflects the same view. Those regulations do not make debarment dependent on administrative or board action upon the application, or on a grant of the exemption.

B. The historical development of this type of legislation, before and after the enactment of Section 3 (a), confirms the validity of interpreting it in accordance with its literal language as making the application for relief the decisive factor in determining eligibility for citizenship.

The early history shows the emergence of the rationale that one who would not choose to serve is not a desirable citizen. It also shows that when Con-

gress chooses to engraft exceptions, as it did in 1931, it uses apt language for the purpose.

Petitioner contends that Section 315 (App. A, *infra*, pp. 49–50) of the 1952 Immigration and Nationality Act (enacted *after* petitioner's request for suspension of deportation) was intended to express the effect of Section 3 (a) of the 1940 Act, and, thus, that the specific requirement of Section 315 (a) that the alien also receive the exemption, if he is to be barred from citizenship, is by implication an additional requirement of Section 3 (a). Our analysis of the 1950–1952 course of this legislation indicates, however, that the committee expressions relied upon by petitioner were applicable only to the earliest draft of the 1952 Act which did not, as did the final statute, specifically refer to Section 3 (a) of the 1940 Act. Section 315, as finally enacted, was (in the aspects pertinent to this case) only a supplement to Section 101 (a) (19) (App. A, *infra*, p. 49), which specifically attested the continued effect of Section 3 (a) of the 1940 Act (as originally enacted) as a ground for ineligibility to citizenship. Moreover, even Section 315, insofar as it may link the grant of the exemption to the application, would not require any evidence of grant of the exemption beyond the factual posture of the instant case (see Point II, *supra*).

## IV

The discussion of what light the 1952 legislation may afford with respect to Section 3 (a) of the 1940 Act must not, in any event, obscure the fact that the

1952 provisions, in themselves, are not operative in petitioner's case. Both his application for exemption and his later application for suspension of deportation were made before the enactment of the 1952 Act. Under the pre-1952 law, he was able to avail himself of the markedly easier requirements concerning the showing of hardship in case of deportation. His application for suspension of deportation cannot now be sustained upon this earlier, less stringent, basis with respect to showing of hardship, while judging the requirement of eligibility for citizenship upon a basis not even enacted at the time of his application.

## ARGUMENT

### I. THE GOVERNMENT DOES NOT RELY UPON THE HOLDING OF THE COURT OF APPEALS THAT THE ATTORNEY GENERAL IS A NECESSARY PARTY

The government has already advised this Court (Br. Opp. 10) that it does not rely upon that aspect of the decision of the Court of Appeals which holds that the Attorney General is a necessary party. Petitioner seeks a declaration that he is not barred from citizenship and is thus not statutorily ineligible for suspension of deportation (R. 5–6), and an injunction against his deportation (R. 6). As we read this Court's decision in *Shaughnessy* v. *Pedreiro*, 349 U. S. 48, 52–54, the question of indispensability of parties does not turn upon the authority of the party before the court to effectuate the ultimate relief which the alien desires but upon his authority to effectuate the specific relief sought in the action. Thus, the Court observed (349 U. S. at 52–54):

> * * * District Directors are authorized by regulation to issue warrants of deportation, * * *. The regulations purport to make these decisions of the District Director final. It seems highly appropriate, therefore, that the District Director charged with enforcement of a deportation order should represent the Government's interest. Otherwise in order to try his case an alien might be compelled to go to the District of Columbia to obtain jurisdiction over the Commissioner. To impose this burden on an alien about to be deported would be completely inconsistent with the basic policy of the Administrative Procedure Act to facilitate court review of such administrative action. We know of no necessity for such a harsh rule. Undoubtedly the Government's defense can be adequately presented by the District Director who is under the supervision of the Commissioner.
>
> It is argued, however, that the Commissioner should be an indispensable party because a judgment against a District Director alone would not be final and binding in other immigration districts. But we need not decide the effect of such a judgment. We cannot assume that a decision on the merits in a court of appeals on a question of this kind, subject to review by this Court, would be lightly disregarded by the immigration authorities. * * * Our former cases have established a policy under which indispensability of parties is determined on practical considerations. * * *

Here, the essence of what petitioner asks is the recall of the order of deportation and the enjoining of the District Director from taking petitioner into custody for deportation. Since the District Director is the

person who would execute the deportations, we think that the Court's decision in *Shaughnessy* v. *Pedreiro, supra,* establishes the District Director as a sufficient party. As noted in the brief in opposition, this will be the position of the government in future cases.

II. SINCE PETITIONER WAS IN FACT RELIEVED FROM SERVICE AS A NEUTRAL ALIEN, HE IS INELIGIBLE FOR CITIZENSHIP AND THEREBY IS ALSO INELIGIBLE FOR SUSPENSION OF DEPORTATION UNDER THE IMMIGRATION ACT OF 1917 (AS AMENDED)

The Court of Appeals also affirmed the dismissal of petitioner's complaint, irrespective of the question of indispensable parties, upon the broader ground that the complaint failed to state a proper claim. The court deemed it unnecessary to inquire whether the selective service board's failure to call petitioner for induction was due to petitioner's request for exemption as an alien, since he was within the bar of the statute as an alien who "has made application" to be relieved from military service (R. 93). While the decision may be sustained upon that ground (discussed *infra,* pp. 23–46), it is the government's position that before that issue is reached a further ground is dispositive of the case, *i. e.,* that petitioner was in fact relieved from military service. He was relieved from service both (1) by the pertinent enactment which—self-executing and without further requirement of any kind—provided that a neutral alien should be relieved if he "made application", and (2) as a matter of record, by the action of the selective service board in refraining from calling him for induction during the time following his application

until he ceased to be a neutral alien and the basis for exemption was thus eliminated. That the basis for exemption subsequently ceased to exist does not negate the crucial fact that for over a quarter of a year petitioner obtained the exemption which he knowingly chose in preference to citizenship.

A. *The Selective Training and Service Act of 1940 and the regulations relieved petitioner from service, irrespective of further administrative action.*

Petitioner was relieved from military service by the self-executing terms of the Selective Training and Service Act, and without need of any further action by a board. The law in effect in 1943 (Selective Training and Service Act of 1940, Section 3 (a), *infra*, App. A, p. 48) provided:

> That any citizen or subject of a neutral country *shall be relieved* from liability for training and service under this Act, *if*, prior to his induction into the land or naval forces, *he has made application* to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President * * *. [Emphasis added.]

While the statutory provision relating to the application specifically requires that the *application* be made "in accordance with rules and regulations", the provision granting relief from military service is, in contrast, subject to no such condition. Upon the making of a proper application, the relief becomes effective under the Act; no rules or regulations can prevent, and no further steps are necessary to, the effectiveness of the application to relieve the applicant from service.

The statute's distinction, between the making of the application and its consequences, with respect to rules and regulations has a sound basis. Administrative need justifies the requirement of an orderly presentation of a neutral alien's case to the authorities, but no delay by those authorities should, in this type of exemption, permit delay in the vesting of the exemption written into the law itself. Whatever tangible recognition of the neutral's right might later be issued by the administrative authorities in the form of a classification of IV–C or otherwise, the right to the exemption would accrue with the application (which was in proper form).[5]

The automatic character of the exemption seems to have been assumed in the selective service regulations in effect in 1943. These provided that when a neutral alien filed his application (Form 301) he should not only be placed in Class IV–C but also, in language similar to the Act itself (7 F. R. 2087):

> shall be relieved from liability for training and service * * *

---

[5] During the progress, in December 1941, of the proposed legislation which produced Section 3 (a), the congressional reports used language consistent with a self-executed exemption:

> In the case of citizens or subjects of any neutral country, special provision is made to enable them, *upon application*, to be relieved from the liability for service * * *. [H. Rept. No. 1508, 77th Cong., 1st Sess., p. 4. Emphasis added.]
>
> * * * * * *
>
> * * * [A]liens who are citizens or subjects of a neutral country would be relieved of liability *upon making application* in the manner prescribed by the President * * *. [S. Rep. No. 915, 77th Cong., 1st Sess., p. 2. Emphasis added.]

The regulations thus appear to treat the relief from liability to service as something in addition to and independent of the IV–C classification. The IV–C classification was to be issued, but the relief from liability was not to be prevented or rendered ineffective by any delay or negligence of a selective service board under the pressure of classification activities. Had the board attempted to call petitioner for induction during the time he remained a neutral alien, he would have needed to adduce only the fact of his making of the application to render the board powerless to deprive him of his exemption—regardless of any delay in the making of the formal IV–C classification.

This express effect of the statutory language is consistent with the general purpose of Section 3 (a). The United States, which has long insisted upon the freedom of its citizens from conscription by other nations, has, in its own conscription enactments, consistently accorded some recognition to a similar claim by citizens of other nations. See *infra,* pp. 26, 32 *ff.* It is entirely consistent with this position that the relief of a neutral alien from military service be recognized as soon as it is properly asserted, without conditioning the exemption on administrative discretion or administrative power to negate the statutory grant of exemption by non-action.[6]

[6] The foregoing considerations were overlooked in one of the holdings in *United States* v. *Bazan*, 228 F. 2d 455 (C. A. D. C.), where the Court of Appeals based its decision under Section 315 of the Immigration and Nationality Act of 1952 (App. A, *infra*, pp. 49–50) on the absence of proof of the administrative granting of the exemption. The government considered the situation too

B. *The selective service board, by its conduct in refraining from inducting petitioner, recognized petitioner's relief from liability for military service.*

In the face of the enactment and regulations, the selective service board, as we have just pointed out, would have been powerless to deny petitioner relief from military service or to act inconsistently with his existing exemption. Actually, the board disclosed by its conduct that it recognized the exemption effected by petitioner's filing of Form 301. The board may have been remiss in failing to evidence the exemption by going through the formal procedure of a IV–C classification and notice to petitioner, as provided in the regulations. But while the record is silent as to what problems of staffing and administration may have caused the delay during that wartime summer and autumn of 1943, the record does indicate the board's recognition of the exemption. Petitioner was not troubled from the time he filed Form 301 until his right to the exemption ceased with the cessation of his status as a neutral alien. This would not appear to have been inadvertent. Before August 26, 1943, when he made application for relief, he had had the ample attention of the board with respect to the requirement that various forms be completed. Conversely, after the board was advised, by the Local Board Memorandum amendment issued on December 20, 1943 (No. 112), that Colombians were no longer neutral aliens, petitioner received the prompt attention of the board within the following month and was classified I–A. In

---

rare and special to warrant a petition for certiorari. See *infra*, p. 29.

the light of the critical state of the war in 1943 and the drastic demand for military manpower at that time, it seems evident that petitioner was in fact relieved from service for at least four months, despite some possible delay in the mechanics of formal classification and notice.

C. *The fact that petitioner's status subsequently changed does not negate the fact that he did obtain exemption.*

Petitioner, in both his petition and brief in this Court, obscures the issue as to the fact of exemption by disregarding the change in petitioner's status resulting from Colombia's entrance into the war.

After stating that the selective service board failed to make a formal classification of IV-C, petitioner continues: "On the contrary, in January 1944, the petitioner received notice from his Board that he had been classified I-A * * * and he promptly and willingly appeared" (Pet. Br. 6, 14; Pet. 8, 24). What is omitted is the fact that petitioner ceased to be a neutral alien on November 26, 1943, when Colombia declared war and became a co-belligerent. The whole impact of petitioner's recital is thus that the selective service board, by classifying petitioner I-A, denied petitioner's exemption as a neutral alien, whereas the fact is that petitioner was not classified I-A in an attempt to deny his neutral exemption. Rather, after a period of more than a quarter of a year, during which the exemption was recognized, he ceased to be a neutral alien—a fact which was exhaustively litigated below by petitioner, and conclusively found against him in

a special opinion of the Board of Immigration Appeals establishing the date of Colombia's entrance into the war (R: 89–91). The record is indisputable: at no time after petitioner filed his application did the board call upon him or in any way deny him his relief from military service as a neutral alien, so long as he remained such an alien.

There need only be added the observation, overlooked in a portion of petitioner's argument, that the fact that petitioner was actually relieved under an exemption is not in any sense negated by the further fact that the exemption, like virtually every exemption under the Act, ceased upon the cessation of the factual basis for the exemption. If one who is exempted as a minister of religion should leave his calling, his exemption would terminate, but he could not claim that he had not received an exemption during the time that he was freed from service.

Similarly, petitioner cannot be heard to complain that he did not get enough advantage out of his application to warrant the permanent consequence imposed upon it by Congress. Congress did not say, as it could have, that only a certain period of freedom from service should be paid for by debarment from citizenship, and not any lesser time; it debarred all aliens who claimed exemption as neutrals. Even a small period of freedom from service—to say nothing of petitioner's three or four months—might mean another person's earlier entrance into service in the beneficiary's place at an extremely critical period of the war. Petitioner intelligently and knowingly chose respite from service as against future citizenship. That the respite was not as long as he may have hoped

does not change the fact of choice. *Machado* v. *McGrath*, 193 F. 2d 706, 709 (C. A. D. C.), certiorari denied, 342 U. S. 948; *Ballester Pons* v. *United States*, 220 F. 2d 399, 403–404 (C. A. 1), certiorari denied, 350 U. S. 830; *Petition of Cuozzo*, 235 F. 2d 184, 185 (C. A. 3); *In re Martinez*, 73 F. Supp. 101, 109 (W. D. Pa.); *Petition of Dweck*, 106 F. Supp. 169 (E. D. N. Y.); *In re Molo*, 107 F. Supp. 137, 140 (S. D. N. Y.); *Petition of Velasquez*, 139 F. Supp. 790, 793 (S. D. N. Y.). As the court said in *Petition of Fatoullah*, 76 F. Supp. 499 (E. D. N. Y.), "it is not seen how this Court can amend [the words of Section 3 (a)] by inserting or adding a provision to the effect that, where there are extenuating circumstances [later co-belligerence of alien's country, as in Ceballos' case], the Naturalization Court may ignore the plain provisions of the law."

### III. DEBARMENT FROM CITIZENSHIP UNDER SECTION 3 (A) OF THE SELECTIVE TRAINING AND SERVICE ACT OF 1940, RESULTS FROM THE MAKING OF AN APPLICATION FOR RELIEF FROM MILITARY SERVICE BY THE ALIEN

It is the position of the government that, even if it be assumed (contrary to our argument in Point II) that petitioner was not relieved at all from military service, he was nevertheless debarred from citizenship by his act of making application for relief from service. The act of application has been made the decisive factor by Congress. Viewed as of the time of the enactment of Section 3 (a), the pertinent considerations support that view, and despite petitioner's reliance upon prior and subsequent history, the history

does not detract from, but rather strengthens, the interpretation of the statute we support, which is also the construction adopted by the court below (R. 93).

A. *The language, purpose, legislative history, judicial, and administrative construction of Section 3 (a) show that the application for exemption is the debarring act.*

1. *The language.*—Section 3 (a) of the Selective Training and Service Act of 1940, as amended immediately after the attack on Pearl Harbor in December 1941, provided (App. A, *infra*, p. 48).

> * * * [A]ny citizen or subject of a neutral country shall be relieved from liability for training and service under this Act *if* * * * *he has made application to be relieved from such liability* in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but *any person who makes such application shall thereafter be debarred* from becoming a citizen of the United States. * * * [Emphasis added.]

Two consequences of the making of the claim were thus set forth:—(1) relief from liability and (2) debarment from citizenship. Neither of these consequences was made conditional upon the other, or made the source of the other. If, for example, eligibility for citizenship had been restored in some other enactment, the liability to military service, in the absence of a specific new provision, would not then have been imposed upon the alien, so long as he had met the condition in Section 3 (a) of an application for exemption. Conversely, under the language of the section, the parallel consequence of debarment from

citizenship stems from the claim and not from the exemption, which is a consequence of the claim.

2. *The purpose.*—This interpretation accords with the basic rationale of the statute. The impetus for the legislation (as shown by the historical development discussed, *infra,* pp. 25–28, 32 *ff*) is the recognition by the United States and, indeed, the insistence by the United States, that certain citizens of one nation could not be conscripted by another nation. There was need, however, to accommodate this aspect with the troublesome consideration that aliens within the United States could thus enjoy substantial benefits and prolonged residence within its protected borders without choosing to contribute their services to the country of their residence. The appropriate accommodation which Congress developed was to recognize the implications of the alien's choice of exemption in its bearing upon any later protestations he might make concerning his devotion to the United States in a period when citizenship would be more attractive. The basic theory of the legislation is the Congressional judgment that a resident alien who would deliberately choose not to serve the United States in wartime—knowing that such a choice meant debarment from future citizenship—would not make a good citizen and should not be allowed that privilege. It is therefore immaterial whether or not the alien obtained the chosen benefit; it is the fact of choice in the time of critical decision which determines his desirability as a citizen.

3. *The contemporary legislative history.*—The 1940 selective service legislation, as originally enacted on

September 16, 1940, embodied no provision for exemption of aliens; it made liable to service male aliens of the specified ages residing in the United States who had declared their intention to become citizens (54 Stat. 885–886, Section 3 (a)). However, there had already been rumblings of objection. The War Department, aware of the potential problem with countries whose nationals would be drafted, suggested at the hearings of July 3, 1940, that provision be made, similar to the 1918 provision (discussed *infra,* pp. 34–36), that a declarant alien may be exempted—

> upon his making declaration withdrawing his intention to become a citizen of the United States, *which withdrawal shall operate and be held to cancel his declaration of intention* from becoming a citizen of the United States, *and he shall forever be debarred* from becoming a citizen of the United States * * *. [Hearings before the Sen. Committee on Military Affairs on S. 4164, 76th Cong., 3d Sess., July 3, 5, 10–12, 1940, p. 357. Emphasis added.]

This suggestion was not adopted, but in April 1941, still 7 months before the attack on Pearl Harbor, the Secretary of State suggested a similar provision, which was passed by the Senate, but not by the House (S. 1397, 77th Cong., 1st Sess.; 87 Cong. Rec. 5726). This later provision stressed the alien's act as the causative factor, supplanting the phrase "*and* he shall forever be debarred" (emphasis added) with the language that a declarant alien "shall be relieved from liability" to service if he made a statement of withdrawal of intention "*which shall be held* to cancel his declaration of intention to become a citi-

zen of the United States *and to forever bar him from becoming such a citizen"* (emphasis added).[7]

Within two days after the attack on Pearl Harbor, hearings were commenced for extending conscription. In the proposal submitted at the outset of the hearings, there reappeared what was substantially an adaptation of the 1918 language (*infra,* p. 36), as follows (Hearings before the House Committee on Military Affairs, on H. R. 6215, 77th Cong., 1st Sess., Dec. 13, 1941, pp. 1–2):

> [A]ny citizen or subject of a neutral country shall be relieved from liability for training and service under this Act by making application * * * to be relieved from liability for training and service under this Act, and *such person* shall thereafter forever be debarred from becoming a citizen of the United States * * *. [Emphasis added.]

This language could conceivably relate "such person" to one who was *"relieved* * * * by making appli-

[7] The text, appearing at 87 Cong. Rec. 5726, was as follows:

> "*Provided further*, That any male alien residing in the United States who has declared his intention to become a citizen of the United States who is registered or who is or may become liable to registration under the provisions of this act shall be relieved from liability to training and service thereunder if he makes a declaration prior to becoming a member of the land or naval forces or within a time fixed by the President if he is already a member of the land or naval forces, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States which shall be held to cancel his declaration of intention to become a citizen of the United States and to forever bar him from becoming such a citizen."

cation". The later change is accordingly significant in providing, in the bill as submitted by the Committee to the House on December 15, the phrase "any person *who makes such application* shall thereafter be debarred * * *" (H. Rep. No. 1508, 77th Cong., 1st Sess., p. 6; emphasis added.)[8]

In the draft submitted at the outset of the Senate committee hearings on December 15, 1941 (Hearings before the Sen. Committee on Military Affairs, 77th Cong., 1st Sess., on S. 2126, Dec. 15 and 16, 1941, p. 1) the changed language already appeared, barring "any person who makes such application."[9] In both the House and Senate reports the debarment was specifically stated to result from "the making of such application".[10]

---

[8] We find no discussion of the change in the hearings themselves. In the hearings held by the Senate committee (Hearings before the Sen. Committee on Military Affairs, 77th Cong., 1st Sess., on S. 2126, p. 51) Captain Keesling reported, concerning provisions on aliens but not clearly or specifically as to the instant provision, "The House has changed its bill completely. The House bill now is almost identical with your bill": And see *ibid.*, p. 46.

[9] This provision was not discussed in the section-by-section discussion. *Id.*, p. 58.

[10] "* * * In the case of citizens or subjects of any neutral country, special provision is made to enable them, upon application, to be relieved from the liability for service, but *the making of such application* will debar them from becoming citizens of the United States * * *. (H. Rept. No. 1508, 77th Cong., 1st Sess., p. 4. Emphasis added.)

"* * * Under the bill reported by the committee, aliens would be liable whether or not they had declared their intention to become citizens. However, aliens who are citizens or subjects of a neutral country would be relieved of liability upon making application in the manner prescribed by the President, but *the*

4. *Judicial opinions.*—There are very few judicial decisions on the issue because the factual situation almost never arises. As pointed out *supra,* pp. 17–20, it is almost a paradox to say that an alien has not been afforded relief from military service when the legislation itself makes that relief mandatory and immediately effective. Only where a rare administrative accident, such as a failure to go through the mechanics of classification, obscures the actual grant of relief (as in this case), or where the issue is raised on pleadings which leave the question of actual relief open, as in *Rasmussen* v. *Brownell,* now pending on petition for a writ of certiorari No. 399, this Term, has the point arisen.[11]

However, it is significant that, in dealing with other issues under the statute, the courts, although not called upon to decide the direct issue, have spoken of the debarment in terms of the application or claim, and not of the actual relief accorded. Thus, this Court said in *McGrath* v. *Kristensen,* 340 U. S. 162, 172:

---

*making of such application* will debar them from ever becoming citizens of the United States * * *." (S. Rept. No. 915, 77th Cong., 1st Sess., p. 2. Emphasis added.)

On the floor of the Senate, Chairman Reynolds employed the identical language of the last sentence of the above Senate report (87 Cong. Rec. 9905).

[11] As noted *supra,* fn. 6, p. 19, in *United States* v. *Bazan,* 228 F. 2d 455 (C. A. D. C.), involving a construction of Section 315 of the Immigration and Nationality Act of 1952 (see *infra,* pp. 49–50), the fact of relief from service had not been litigated before the District Court and the Court of Appeals based its decision on the absence of proof. *Petition of Caputo,* 118 F. Supp. 870 (E. D. N. Y.), also interpreting Section 315, involved an enemy alien not covered by Section 3 (a) of the 1940 Selective Service Act.

> By the terms of the statute, that bar only comes into existence when an alien resident liable for service *asks* to be relieved. [Emphasis added.]

And in *Moser* v. *United States,* 341 U. S. 41, 45, the Court stated that Section 3 (a) "imposed the condition that neutral aliens residing here who *claimed* such immunity would be debarred from citizenship" (emphasis added). See also, *Machado* v. *McGrath,* 193 F. 2d 706, 710 (C. A., D. C.), certiorari denied, 342 U. S. 948: "any person who *asks* for this relief is thereafter debarred" (emphasis added); *Mannerfrid* v. *United States,* 200 F. 2d 730, 731 (C. A. 2), certiorari denied, 345 U. S. 918: "he would be debarred from ever becoming a citizen, if he ever *claimed* exemption from military service as he did", and "the forfeiture * * * that the Act imposes upon a *claim* for exemption" (emphasis added); *Navarro* v. *Landon,* 108 F. Supp. 922, 925 (S. D. Cal.): "his *application* created the bar" (emphasis added).

5. *The contemporary administrative construction.*— The contemporary administrative construction was also in accord with the literal language of the statute. The regulations of the Selective Service System provided that when an alien filed an application for exemption he should be placed in Class IV-C, but also stated, in independent phrases not conditional upon the IV-C classification, that upon such filing the alien should be relieved from liability and be debarred from becoming a citizen.[12] See *supra,* pp. 18–19. Simi-

[12] Section 622.43 * * * (b) When an alien registrant who is a citizen or subject of a neutral country * * * files [Form 301] * * * he shall be placed in Class IV-C; shall be relieved from liability for training and service * * *; and shall thereafter be debarred

larly, Sections 623.1 and 623.61 of these regulations provided generally for prompt classification and mailing of notice thereof, without any attempt to provide that fulfillment of these responsibilities of the selective service board was a prerequisite to the operation of the provision of the statute making the application a permanent debarment from citizenship. Indeed, in 1943, probably because of the controversies concerning alien treaty exemptions between the United States and various countries, Section 622.43 was revised to delete the language incorporating the statutory provisions concerning relief from liability and concerning debarment, and to deal only with the Selective Service System's function of providing a IV-C classification.[13]

The official forms, signed by the alien, were harmonious with the contemporary interpretation. Form 304 explicitly warned the alien that his application for relief "will also debar you from thereafter becoming a citizen" (*supra*, p. 4), and Form 301 stated "I understand that *the making of this application * * * will debar me*" (*supra*, p. 4; emphasis added).

---

from becoming a citizen of the United States." (7 F. R. 2087, effective Mar. 16, 1942.)

It is noteworthy that the word "thereafter," by reason of the complete separation of the phrases by semi-colons, relates only to the time of the alien's filing of his application and not to the IV-C classification or relief from liability.

[13] Section 622.43, as revised: "(a) In Class IV-C shall be placed any registrant: * * * (2) Who is an alien and who is a citizen or subject of a neutral country * * * and who * * * files with his local board an Application by Alien for Relief from Military Service (Form 301) * * *." (32 C. F. R. [1938 ed., 1943 Supp.] 622.43; 8 F. R. 13672, effective Oct. 1, 1943.)

In short, all the pertinent factors bearing directly on the 1940–1941 legislation here involved support the unconditional nature and operation of the statutory language that "any person *who makes such application* shall thereafter be debarred" (emphasis added).

B. *The historical development of this type of legislation shows that the bar to citizenship stems from the claim to exemption.*

As against the explicit wording and contemporary history of the 1940 Act (as amended), petitioner adduces only certain utterances in opinions involving other enactments (discussed, *infra*, p. 36, fn. 17), the random phrasing of a very general congressional report written long after, in 1950 (discussed in its chronological position *infra*, pp. 40–43), and the asserted effect of a provision of the 1952 immigration legislation (discussed, *infra*, p. 40 *ff*). Viewed in historical context, none of these factors detracts from the force of the more pertinent considerations discussed above, which support our interpretation of Section 3 (a) in accord with its literal terms.

1. *The period prior to 1940.*—The early development of the debarment from citizenship of aliens claiming exemption from military service discloses that its fundamental rationale, as already noted (*supra*, pp. 19, 25), is a Congressional judgment as to their undesirability as citizens.

While there was early recognition and, indeed, insistence that certain aliens could not properly be sub-

ject to military service,[14] during the Civil War, in light of the privileges then enjoyed by some aliens in the United States including even the right to vote, there were countervailing arguments for military service by aliens. Legislation requiring such service, passed in 1862, was applied to declarant aliens and aliens who had voted, and, later, to all aliens.[15] In the course of debate on that legislation, Senator Doolittle argued that an alien who had resided in the United States and had pleaded exemption as an alien, "is not proving that he is a good citizen and attached to the Constitution." 62 Cong. Globe 993. And Senator Cowan urged the drafting of aliens as "the very best mode of testing them" (see 62 Cong. Globe 1001).[16]

The conscription law of 1898 (30 Stat. 361) and the first 1917 law (40 Stat. 76, 78) again made declarant

[14] See the observations of President Madison in 1804 and of Secretary of State Seward on the eve of the Civil War, in 1862 (4 Moore, *Digest of International Law* 52–53; 62 Cong. Globe 991). Cf. Secretary of State Fish in 1869 and an assistant (Moore, *op. cit.* 57–59) with Secretaries of State Bayard and Blaine (4 Moore, *op. cit.* 54, 60). And see Moore, *op. cit.* 58; 3 Hackworth, *Digest of International Law*, 599).

[15] Act of July 17, 1862, c. 201, 12 Stat. 597; Act of March 3, 1863, 12 Stat. 731; see 62 Cong. Globe 991–993, 997–1002, 1217; 4 Moore, *op. cit.* 53–54.

[16] The actual treatment of aliens during the Civil War did not follow a clear pattern, for while the President proclaimed that no declarant alien who had voted or who was found in the United States within 65 days would be exempted (13 Stat. 732), it later appeared, in the words of Secretary of State Bayard, that "there [was] not a single instance in which an alien was held to military duty when his Government called for his release" (4 Moore, *op. cit.* 54–56; and see in accord and *contra*, 4 Moore, *op. cit.* 58, 60).

aliens liable to military service but it was afterward admitted that the 1917 enactment violated the rights of aliens, and that government departments had not directed attention to the fact of such violation when the bill was being enacted. 56 Cong. Rec. 4855 (Congressman Dent, April 9, 1918); Hearings of House Committee on Military Affairs on S. J. Res. No. 84, 65th Cong., 1st Sess., pp. 4, 10 (Secretary of State Lansing, September 26, 1917). Diplomatic protests ensued (3 Hackworth, *op. cit.*, 603, 608–610), resulting in an informal procedure for release of aliens (Letter of Secretary of State, February 14, 1918, appearing in H. Rep. No. 342, 65th Cong., 2d Sess., pp. 2–3; 56 Cong. Rec. 4857–4858; 3 Hackworth, *op. cit.* 603–605). The War Department and the Department of State suggested amendment of the 1917 Act, in a form exempting neutral aliens without attaching any consequences to the exemption. H. Rep. 342, 65th Cong., 2d Sess., p. 3. On April 9, 1918, in the debate on the proposed amendment, a letter of President Wilson was read, stating, *inter alia,* "Whatever the general merits of the question, if we could consider ourselves absolutely free with regard to it, we are unfortunately not free but are bound by definite treaty obligations * * *" (56 Cong. Rec. 4854).

On June 25, 1918, Senator Hitchcock introduced an amendment with a proviso that "If such a claim to *a*mmunity [sic] is asserted, it shall be recognized and shall operate automatically as a withdrawal and cancellation of the declaration to become an American citizen, and the individual shall forever be debarred from becoming one." Senator Hitchcock supported

the amendment on the ground that in drafting neutrals "we are violating treaties and to some extent are violating international comity"; that the War Department construed the then Act of Congress as "repealing the treaties" although the State Department was "unable to take that view of it * * *"; that debarment from future naturalization "will restrain men from setting up the claim" and was included to prevent "a good deal of ill feeling and a good deal of indignation on the part of American citizens whose sons are subjected to the draft to have their neighbors released from the draft and to stay at home to do the voting while their sons go to the war." 56 Cong. Rec. 8249.

While a part of these remarks indicated a purpose to force aliens into service, contrary to the general objective of recognizing their right to be free of service, the reference to the indignation of citizens suggests the purpose of imposing the debarment as a criterion of who would constitute a desirable citizen.

In the course of the debate, a number of Senators insisted that the mere withdrawal of the declaration would not be sufficient—that the withdrawing alien should be debarred from citizenship. While there were references to the possible effect of inducing military service by aliens, the principal emphasis was on the undesirability of exempt aliens as voters, and on the theory that the criteria of who should be a desirable American citizen could not be prescribed in treaties with foreign countries. 56 Cong. Rec. 8415–8419. Directly related to the criterion-of-citizenship basis, rather than the punishment aspect, was the

argument of Senator Lodge, "No country would submit for one moment to an agreement with another affecting the conditions on which a foreigner could become a citizen." 56 Cong. Rec. 8485.

The amendment, as enacted on July 9, 1918, provided that a neutral declarant alien (40 Stat. 885, 955):

> shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen, and he shall forever be debarred from becoming a citizen of the United States.

This statute containing the language "and he shall forever be debarred," was not as conclusive of the question whether actual relief from liability was a condition to debarment as the instant 1941 language that "any person who makes such application" (*supra*, p. 24) shall be debarred. Nevertheless, the statute was reported by Congressional committees as providing that a neutral declarant alien "shall be relieved from liability to service by *withdrawing* his declaration, *which* shall forever debar him" (H. Rep. No. 763, 65th Cong., 2d Sess., p. 5; emphasis added).[17]

[17] Petitioner relies (Pet. Br. 10) upon some language of a 1924 District Court opinion, *In re Gustavson*, 300 Fed. 251 (S. D. Cal.), assumed by petitioner to impose debarment only as a penalty where relief from service is proved. It is the holding of the case, however, that the alien there involved must be denied naturalization upon the broader ground that he had demonstrated lack of attachment to the Constitution (300 Fed. at 251). The

A modifying enactment, 13 years later, provided that no debarment should ensue if the "withdrawal [of the "intention to become a citizen"] (and the application therefor) and discharge took place after November 11, 1918 [Armistice Day]" (Act of Feb. 11, 1931, 46 Stat. 1087). This modification is significant because it refers to withdrawal (by the alien) and discharge (by the government), both of which had to occur after the armistice. To that extent, the wording demonstrates that when the Congress wishes the *government's* action upon an alien's act to be controlling, rather than the *alien's* act (as petitioner here urges that the board's IV-C classification should control rather than his own application for exemption), proper language is available. In the 1941 Act Con-

---

judge's statement that the intention of the 1918 Act was "to fix a penalty where an alien declarant was relieved from military service," was dictum which, particularly in view of the different wording of the 1918 Act, is not authoritative for the construction of the 1941 Act.

Petitioner places similar reliance on *In re Siem*, 284 Fed. 868 (D. Mont.), affirmed, 299 Fed. 582 (C. A. 9). This case, like *Gustavson*, *supra*, dealt only with the question of whether lack of attachment to the Constitution was demonstrated. The alien apparently registered, claimed exemption as an alien in 1917, before the 1918 enactment granting exemption and imposing debarment, and was classified I–A (although thereafter rejected as unfit). See 284 Fed. at 868, 299 Fed. at 582. Instead of a withdrawal of declaration of intention, the alien apparently presented only a "mild insistence upon the right of exemption" (284 Fed. at 872; and see 299 Fed. at 584: "[A]n alien may be relieved from military service by withdrawing his declaration of intention, in which event he is forever barred * * *. If Congress intended that the same result should follow from the mere claim of an exemption given by law, it would have so declared.") The decision is accordingly inapposite and, indeed, speaks contrary to petitioner's position.

gress did not choose to state that a person who obtained a "discharge" or a particular IV-C classification should be debarred, but rather imposed the debarment upon "any person who makes such application". In the light of the 1931 statute, this cannot be dismissed as mere inadvertence.

2. *The period subsequent to 1941 and prior to the 1952 immigration legislation.*—The events since 1941 confirm the effect of Section 3 (a) as imposing debarment upon the alien's act of choosing exemption, without regard to whether he was actually relieved from service.

The words of legislators and administrators continued to suggest the decisiveness of the alien's application. When, in October 1945, the immigration law was amended to make specific reference, in the definition of "ineligible for citizenship", to those debarred under Section 3 (a) of the selective service legislation, the committee report quoted this letter of Attorney General Biddle:

> Section 3 (a) * * * provides that any citizen or subject of a neutral country shall be relieved from liability and training under the act if he makes application * * *, but any person who does so is thereafter debarred * * *. [H. Rep. No. 346, 79th Cong., 1st Sess., p. 2.]

In 1948, when a new selective service law was enacted, Section 4 (a) made a change by providing for debarment of any alien, *not otherwise deferable or exempt,* who made application for relief from military service, but again provided that "any person *who makes such application* shall thereafter be debarred

from becoming a citizen of the United States." (Emphasis added).[18] Again, the Congressional reports referred to the *application* as the decisive act. The Senate report (No. 1268, 80th Cong., 2d Sess., p. 6) stated:

> * * * In the event [the alien] *makes such an application,* he is thereafter barred * * *. (Emphasis added.)

And the conference report characterized the debarment as applying to the person who "sought relief", again without reference to any evidence of actual relief from service.[19]

When language similar to the instant wording, rather than that of the 1948 Act, was adopted in 1951 in Section 4 (a) of the Universal Military Training

[18] The pertinent language, 62 Stat. 604, is as follows: "* * * Any citizen of a foreign country, who is not deferable or exempt from training and service under the provisions of this title (other than this subsection), shall be relieved from liability for training and service under this title if, prior to his induction into the armed forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President; but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States. * * *"

[19] The statement is as follows: "The Senate bill provided that citizens of a foreign country should be relieved from liability for training and service upon application for such relief, but provided that *any person who sought relief* should thereafter be debarred from becoming a citizen of the United States. The House amendment excluded from liability for service those aliens who have not declared their intentions to become citizens of the United States. The conference agreement adopts the provisions of the Senate bill with respect to liability for training and service of aliens but insuring that *properly deferable aliens* may be relieved from liability for induction without debarment from citizenship." (H. Rep. No. 2438, 80th Cong., 2d Sess., pp. 44–45. Emphasis added.)

nd Service Act (65 Stat. 75), it was also characterized as making the application itself the operative factor. The conference report stated: "[I]n the event that such persons request release from service, they will be debarred" (H. Rep. No. 535, 82d Cong., 1st Sess., appearing at 97 Cong. Rec. 6249); and Chairman Vinson said, "unless they request release from service, in which case they will forever be debarred from citizenship." 97 Cong. Rec. 6253.[20]

3. *The Immigration and Nationality Act of 1952.*— Petitioner relies heavily on two remarks of a committee report in 1950 (Pet. Br. 11–12), made at an early stage in the long course of the legislation which became the Immigration and Nationality Act of 1952, to show that our view of debarment is incorrect. Those remarks, in context, do not have the significance attributed to them by petitioner.

The Committee's remarks concern a draft of Section 315 which was not enacted in that form; the proposed section would have provided:

> (a) Any alien who applies or has applied for exemption or discharge from training or service in the armed forces of the United States *solely* on the ground that he is an alien, and is

---

[20] Also significant is the amendment offered by Representative Sadlak, seeking to add the following to the debarring language: "Any citizen of a foreign country who, notwithstanding the relief from liability for training and service under this title afforded him by the preceding sentence, shall have enlisted in or shall have been inducted into the Armed Forces of the United States pursuant to the provisions of this title, shall be eligible for full and immediate United States citizenship in accordance with the provisions of section 22 of this title" [also offered in amendment].

The amendment was rejected. (97 Cong. Rec. 3909.)

or was relieved or discharged from such training or service *solely* on such ground, shall be barred from becoming a citizen of the United States.

(b) The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service solely because he was an alien. [S. 3455, 81st Cong., 2d Sess., April 20, 1950; then Section 314; emphasis added].

It should also be noted that the bill in which this section was included did not provide a reference, as does Section 101 (a) (19) of the final enactment (App. A, *infra,* p. 49), to prior selective service legislation in this field as part of the definition of "ineligible to citizenship." It is in this context that the remarks reled upon by petitioner must be read. S. Rep. No. 1515, 81st Cong., 2d Session, stated at p. 725:

Another group of persons who are permanently barred from applying for citizenship is that group covered by the provisions of section 4 (a) of the Selective Service Act of 1948. This section provides that an alien who, not being deferrable or exempt from training and service, *applies for relief* from such training and service prior to his induction *is forever barred* from applying for naturalization. The subcommittee feels that *this provision* is in line with the general concept of the Nationality Act and will recommend that these provisions be incorporated in the proposed bill so that all requirements for naturalization may be found in one Act. ***However, the subcommittee considers that such exemption should be applied***

> *for and granted solely on the grounds of alienage, and is recommending accordingly.* [Emphasis added.]

And at p. 731:

> The subcommittee recommends enactment into the naturalization law of the *essential* provisions of section 4 (a) of the Selective Service Act of 1948 providing that an alien who, not being deferable or exempt from training and service, *applies* for relief from such training and service on the grounds of his alienage prior to his induction *shall be forever barred* from applying for naturalization. [Emphasis added.]

Petitioner seizes upon the phrase (in the first quotation from S. Rep. 1515) that "all requirements for naturalization may be found in one Act"—as indicating that after 1952 the new legislation would alone control, regardless of the prior provisions—without considering the fact that later the bill was changed to refer specifically to prior selective service legislation. Moreover, petitioner's implication that the present Section 315 of the 1952 Act (App. A, *infra*, pp. 49–50) was the subject of the committee's remarks fails to note (1) that the committee was speaking of Section 4 (a) of the 1948 Selective Service Act as expressing the "general concept" and was not interpreting Section 3 (a) of the 1940 Act, and (2) that the committee, in summarizing Section 4 (a) (and thus the general concept of former law) mentioned only the *application* for relief and said nothing of a requirement of further *grant* of the relief. Also, as noted

*supra*, while Section 4 (a) of the 1948 Act was similar to Section 3 (a) of the 1940 Act (as amended) in imposing permanent disbarment from citizenship, it was not, as contended by petitioner (Pet. Br. 12), a "re-enactment in *haec verbae* of Section 3 (a)," for Section 4 (a) contained language, not present in the 1941 statute, making its provisions applicable only to an alien "who is not deferable or exempt from training and service under the provisions of this title (other than this subsection)" (Act of June 24, 1948, 62 Stat. 604).

In combination, the language of the proposed bill referring to deferments *solely* on grounds of alienage,[21] plus the omission of a reference to Section 3 (a) in the definition of ineligibility to citizenship, plus the reference in the reports only to the 1948 Selective Service Act, would have created problems as to whether the bar of Section 3 (a) of the 1940 Selective Service Act, as amended, survived the 1952 Act. Presumably to foreclose that possibility in the act that finally emerged (in contrast with the bill to which S. Rep. 1515 was addressed), there was included a specific reference to debarment under Section 3 (a) of the 1940 Act, as well as to Section 4 (a) of the 1948 Act, in the definition of "ineligible to citizenship" in S. 716 and H. R. 2379, 82d Cong., 1st Sess., introduced, respectively, on January 29, and February 5,

[21] In the preceding July 1949, Moser, a Swiss alien, had been upheld in the contention that he had not applied for exemption under Section 3 (a) of the 1940 Act solely on the grounds of alienage but upon the ground of a treaty between Switzerland and the United States concerning aliens. *Petition of Moser*, 85 F. Supp. 683 (E. D. N. Y.). See *Moser* v. *United States*, 341 U. S. 41.

1951, and which became the 1952 Act. Moreover, there was omitted from the final draft of Section 315 (a) the word "solely".[22]

It seems clear, therefore, not only that the language of S. Rep. 1515 on which petitioner relies has no significance to the question here at issue, but that Section 315 (a), whatever its meaning, does not serve to change the effect of debarment already accomplished under Section 3 (a) of the Selective Training and Service Act of 1940, as amended. As pertinent to the present case, Section 315 (a), as finally enacted, must be viewed simply as a provision coordinate with Section 101 (a) (19) (App. A, *infra*, p. 49)—defining "ineligible to citizenship"—and supplementing it by covering any exemptions not covered by the recognition of the earlier Acts in Section 101 (a) (19).[23]

---

[22] A parallel change was made in selective service legislation. The Act of June 19, 1951 (65 Stat. 75), omitted from the new Section 4 (a) of the Universal Military Training and Service Act, the language of the 1948 Act, "who is not deferable or exempt from training and service under the provisions of this title (other than this subsection)", and returned to the language of Section 3 (a) of the 1940 Act. The 1951 wording provided that an alien, of the specified age, not exempt from registration, who remained in the United States in a status other than that of a permanent resident for over one year "shall be relieved from liability for training and service under this title if, prior to his induction into the Armed Forces he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President; but *any alien who makes such application shall thereafter be debarred* from becoming a citizen of the United States" (emphasis added). 65 Stat. 75. The same provision appeared with respect to service in the National Security Training Corps.

[23] There were a number of areas in which this residual coverage could well have been thought necessary. For example, *McGrath* v. *Kristensen*, 340 U. S. 162, held that the making of application

The operative effect of Section 315 (a) itself is not in issue here since petitioner does not seek naturalization. As we point out *infra*, pp. 46–47, petitioner cannot rely upon it as establishing his eligibility to citizenship in this case since his application for suspension of deportation is based on the pre-1952 Act, and must be determined by his eligibility to citizen-

---

by one who was not liable for service at the time (and therefore was not relieved from service) was not a bar to citizenship; the coupling of the application with relief, in Section 315 (a), may well have been intended to establish the same rule. Also the enduring nature of the 1918 debarment was expressly recognized by the reports of the congressional committees which considered the 1931 legislation (*supra*, p. 37; and see H. Rep. 910, S. Rep. 923, 71st Cong., 2d Sess.). While Congress, in 1940 (Section 504 of the Nationality Act, 54 Stat. 1137, 1172), specifically attempted to repeal the 1918 debarment (Immigration and Naturalization Service, Interpretation No. 1, June 5, 1941), lower courts were divided as to whether the 1940 repealer terminated the disqualification. See *In re Urmeneta*, 42 F. Supp. 138 (E. D. Wis.) and *In re Samowich*, 70 F. Supp. 273 (W. D. Wash.). Debarment might thus be assured only under Section 315 (a).

The drafters of the legislation could also have had in mind enemy aliens who obtained exemption by making objection to service in awareness of the policy of the armed forces to reject objecting aliens. See *Petition of Caputo*, 118 F. Supp. 870 (E. D. N. Y.). The subsequent rejection of this view does not dispel its possible purpose. *Petition of Zumsteg*, 122 F. Supp. 670 (S. D. N. Y.); *Petition of Schulz*, 384 Pa. 558; 121 A. 2d 164, 166. See the vigorous dissenting opinion of Judges Musmanno and Bell in *Schulz*, *supra*, 384 Pa., 121 A 2d at 167, urging Section 315 (a) as applicable in that case.

Similarly, the situation presented by *Moser* v. *United States*, 341 U. S. 41, of a person claiming exemption as an alien under treaty rights might have been thought within the purview of Section 315, although later a court held to the contrary, *Petition of Berini*, 112 F. Supp. 837 (E. D. N. Y.). The fact that Section 315 was made applicable "notwithstanding" the savings clause shows an intent to cover broadly exempt aliens otherwise free from disbarment.

ship under the pre-1952 statutes. It is sufficient here to point out that, as we have shown, there is nothing in the language or the legislative history of Section 315 (a) which detracts from the clear language and full history of Section 3 (a) of the 1940 Act, as amended, and which, certainly before 1952, rendered petitioner ineligible to citizenship on the basis of his application alone.

IV. PETITIONER'S REQUEST FOR SUSPENSION OF DEPORTATION, MADE BEFORE THE 1952 ACT, IS NOT TO BE DETERMINED UNDER THE 1952 LAW

The instant case is not governed by the provisions of the 1952 Act or by decisions in which naturalization is sought under the 1952 Act. Our discussion of the provisions of the 1952 Act (*supra*, pp. 40–46), solely for the light the new provision may afford on the earlier provisions, must not obscure the fact that petitioner made his application for suspension of deportation before the 1952 Act was enacted. He had the benefit of the less stringent requirements as to showing of hardship embodied in the earlier Act.[24] He filed no petition for naturalization under the 1952 Act and his eligibility to citizenship, as a requirement of his requested relief of suspension of deportation, was not and could not be determined upon the basis of 1952 provisions not even in existence. He cannot now demand suspension of deportation under the earlier, less stringent, requirements as to hardship and simultaneously seek to have his eligibility to citizenship (another prerequisite for such suspension under the former act) determined by the later law.

[24] The standard of the 1917 Act, as amended, of "serious economic detriment" to dependents has, under Section 244 of the 1952 Act, been changed to "exceptional and extremely unusual hardship."

We do not concede that petitioner would be eligible for citizenship under the 1952 Act. In the first place, as urged in Point II, we think the record shows that petitioner both applied for and was granted relief from service on the ground of alienage. *Supra*, pp. 16–23. Furthermore, as discussed *supra*, pp. 40–46, we think that Section 315 (a) does not serve to change the effect of an accomplished debarment of citizenship under Section 3 (a) of the Selective Training and Service Act of 1940, as amended. But, in any event, and even if we are wrong as to a future application for naturalization by petitioner, he cannot have his present request for relief from deportation determined by the 1952 Act.[25]

## CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

J. LEE RANKIN,
*Solicitor General.*
WARREN OLNEY III,
*Assistant Attorney General.*
BEATRICE ROSENBERG,
J. F. BISHOP,
*Attorneys.*

OCTOBER 1956.

[25] By now, petitioner appears to have the residence requirements for an application for suspension of deportation under Section 244 of the 1952 Act. He can apply for relief under that Act, not because he is eligible for citizenship, but because the Board of Immigration Appeals has indicated that, under the 1952 Act, eligibility for citizenship is not a prerequisite for suspension of deportation under Section 244. *Matter of G.* 5 I & N. Dec. 106. Petitioner will, in that event, have to meet the standard of economic hardship of the 1952 Act.

# APPENDIX A

## STATUTES INVOLVED

Section 3 (a) of the Selective Training and Service Act of 1940, 54 Stat. 885, as amended, 50 U. S. C. App. (1946 ed.) 303 (a), provided:

> Except as otherwise provided in this Act, every male citizen and every other male person residing in the United States, who is between the ages of nineteen and forty-five * * * shall be liable for training and service in the land and naval forces of the United States: *Provided,* That any citizen or subject of a neutral country shall be relieved from liability for training and service under this Act if, prior to his induction into the land or naval forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States. * * *

Section 19 (c) of the Immigration Act of 1917, as amended, 62 Stat. 1206, 8 U. S. C. (1946 ed. Supp. V) 155, provided:

> In the case of any alien * * * who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may * * * (2) suspend deportation of such alien if he is not ineligible for naturalization * * * if he finds (a) that such deportation would result in serious economic detriment to a citizen * * * who is the spouse, * * * or minor child of such deportable alien * * *.

Section 28 (c) of the Immigration Act of 1924, as amended by the Act of October 29, 1945, 59 Stat. 551, 8 U. S. C. (1946 ed.) 224 (c) provided:

> The term "ineligible to citizenship", when used in reference to any individual, includes an individual who is debarred from becoming a citizen of the United States under * * * section 3 (a) of the Selective Training and Service Act of 1940, as amended, (55 Stat. 845; U. S. C., title 50, App. Supp. III), section 303 (a), or under any law amendatory of, supplementary to, or in substitution for, any such sections; * * *.

The Immigration and Nationality Act of 1952, Sections 101 (a) (19), 315, 405, 66 Stat. 169, 242, 280, 8 U. S. C. 1101 (a) (19), 1426, 1101 fn., provides:

> [§ 101 (a)] (19). The term "ineligible to citizenship", when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3 (a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4 (a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76) or under any section of this Act, or any other Act * * *.
>
> [§ 315] (a). Notwithstanding the provisions of section 405 (b), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

(b) The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien.

[§ 405] (a). Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any * * * warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended * * * which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection.

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

# APPENDIX B

## The Circumstances of Petitioner's Signing of the Exemption Forms

The circumstances concerning the signing of the exemption forms have been stated by petitioner at different times to different effect. In a sworn affidavit before the United States Consul at Mexico City, petitioner denied ever having signed a Form 301 (R. 32, 85). In a hearing before a Special Inquiry Officer of the Immigration Service on July 31, 1951, at which hearing the officer placed the Form 301 itself in evidence (R. 35), petitioner asserted that he and other Latins discussed the situation, "not being able to ask anybody in the draft board about what was the best procedure to follow due to the fact that at that time millions of boys were being drafted and the forms were being handed to you to be filled if you wanted to fill them" (R. 36). Petitioner and his friends decided that they would prefer to serve in the Colombian army, rather than the United States army (R. 32, 36), for the following reasons (R. 36):

> * * * If we went into the United States Army we felt that we would not have the same opportunity of being treated as fair as a native of the United States, and not only because we were aliens but also because being used to tropical climates that we might be sent to places that were extremely full of tropical or other diseases. * * *

Petitioner, at the same 1951 hearing, testified that he thought Form 301 involved only a temporary deferment "pending indication from the same draft board as to what would be the best choice for me as to

whether I wanted to serve in the Colombian Army or the United States Army" (R. 32, 36–37).

Interrogated as to his earlier affidavit before the United States Consul in which he denied signing of Form 301, petitioner stated that he "never thought the fact that [he] signed that form before was still in effect," since, upon Colombia's later declaration of war, he had been called by the selective service board, although he was never called for induction prior to Colombia's belligerency, and he was never actually inducted into the United States armed forces, due to exemption for physical condition (R. 32–33). Petitioner further asserted that he did not understand that in signing Form 301 he was signing a paper by which his citizenship would be affected (R. 34), but he at no point testified to inability to understand the meaning of what he signed.

At the reopened hearing on January 25, 1954, petitioner asserted that he had discussed the signing of the forms with the selective service board as well as with fellow Latins (R. 57–61, 64, 66). He asserted that in May 1942 he lost his registration card and went to the selective service board to get a copy and again went to the board to notify it of a change of address; that on these occasions he discussed with the board the matter of serving in a division of Colombians "within the United States army" (R. 57–58); that he had further discussions as to the same effect with the board and with fellow Latins upon receipt of Forms 304 and 301 (R. 57–59). He could not state, however, with whom he had spoken at the board (R. 64).

Petitioner had no explanation for having written an absolute refusal to serve, in his Forms 304 and 301, instead of writing some explanatory statement of willingness to serve in a Colombian unit of the United

States army (R. 64). He testified that he did not understand that he was asking to be relieved from military service (R. 61). With respect to the clause in Form 301 specifically stating that debarment from citizenship would result from making application for relief from service, petitioner stated, "the fact that I would serve in the United States Army would automatically eliminate that clause" (R. 65).

The special inquiry officer concluded that petitioner "understood the language of the form [301] which is simple" (R. 71); that, on the basis of petitioner's affluent business standing and general demeanor, he was a person of intelligence and ability to understand documents, even of complex nature (R. 75); and that there was no evidence that the selective service board informed petitioner that a special group of Colombians was being formed for the United States armed forces (R. 75).

The Board of Immigration Appeals, in dismissing petitioner's appeal, pointed out, *inter alia*, the same considerations that the special inquiry officer had noted, *i. e.*, petitioner's familiarity with the English language as a translator, his intellectual capacity as a successful businessman to understand the forms involved, and the simplicity and clarity of the forms themselves (R. 81–83). With respect to petitioner's more recent claims of misunderstanding and of discussions with the selective service board, the Board considered petitioner's inconsistencies to be such that "his recollection of events cannot be relied upon" (R. 83, 89). With respect to petitioner's attempted explanation of the fact that he had denied before the United States Consul ever having signed Form 301, the Board found "such a selective attitude by [petitioner] toward facts that his candidness must be questioned" (R. 85).

U. S. GOVERNMENT PRINTING OFFICE 1961